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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-219389.2 **DATE:** October 31, 1985
MATTER OF: Raytheon Support Services Company

DIGEST:

1. Contracting agency's analysis of proposals for cost realism involves the exercise of informed judgment and this Office will not question such an analysis unless it clearly lacks a reasonable basis. General Accounting Office's in camera review of all the evaluation materials in light of the protest issues raised reveals no basis for finding that selection officials abused their discretion, and cost realism analysis which compared independent government estimate with proposed costs and which was completed in accordance with solicitation evaluation scheme was reasonable.
2. Where protester does not learn of specific grounds for protest until agency debriefing, a protest filed within 10 working days after the debriefing is timely.
3. Protest that evaluation scheme employed by the agency was inconsistent with the criteria set forth in the solicitation is denied where the solicitation clearly advises offerors of the broad scheme of scoring to be employed with reasonably definite information concerning the relative importance of the evaluation factors and the description contained in the solicitation adequately supports the weights which were used in the evaluation scheme.
4. Protest alleging that award to higher technically rated, higher cost offeror was not justified is denied where that result is consistent with the evaluation criteria stated in the solicitation and supported by the agency's cost realism analysis.

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Raytheon Support Services Company protests award of a cost-plus-fixed-fee contract to E-Systems under request for proposals (RFP) No. DAAB07-84-R-J0308 issued by the United States Army Communications-Electronics Command, Fort Monmouth, New Jersey. Raytheon generally contends that the Army improperly evaluated and downgraded its proposal and did not make award in accordance with the criteria stipulated in the solicitation. We deny the protest.

The solicitation was issued on September 28, 1984, for the acquisition of services and materials necessary to establish and maintain a government owned-contractor operated facility at the Lexington Bluegrass Army Depot Activity in Lexington, Kentucky, to be used for cable fabrication and the repair and overhaul of communications-electronics equipment. The effort included conversion of a specific warehouse, 1-year operation of the repair facility, and three 1-year options for the continuation of services. Approximately 90 firms received a copy of the RFP; the Army received eight proposals by the December 28, 1984, closing date for receipt of proposals.

Upon initial evaluation, four offerors were determined to be within the competitive range with E-Systems ranking first and Raytheon second. Discussions were held and each offeror was told the key items that the government evaluators considered to be deficient in its proposal. Following these discussions, best and final offers were requested and received from all four offerors by March 22, 1985. The final evaluation resulted in an award to E-Systems in the amount of \$7,772,159, on June 14, 1985. Raytheon, which was ranked third as a result of the final evaluation, filed a protest with this Office which was dismissed (B-219389.1, June 19, 1985) because a basis for the protest was not stated. Raytheon subsequently requested a debriefing which was conducted by the Army at Fort Monmouth on June 24, 1985, and Raytheon filed the instant protest with this Office on June 28, 1985.

Raytheon contends that its cost proposal was improperly evaluated and downgraded for cost realism--because its proposed cost was less than that of other offerors and the government's estimate--and because its fixed fee rate was higher than other offerors' fixed fee rates. Raytheon also contends that its technical proposal was impermissibly downgraded for lack of design engineering capability when the solicitation advised that "the contractor shall expend no effort under this work statement

for engineering design or development of the end items or components."

Initially we note that the Army has denied the protester access to the awardee's proposal and to much of the source selection material, all of which have been provided to this Office for our in camera review in light of the protest issues raised. Our discussion of their contents, however, is necessarily limited in this decision because of the agency's restriction on their disclosure. See Eaton-Kenway, B-212575.2, June 20, 1984, 84-1 C.P.D. ¶ 649 at 4.

First we point out that the function of our review is not to determine independently the relative merit of proposals, as the evaluation of proposals is properly the function of the procuring agency which must bear the burden of any difficulties resulting from a defective evaluation. Litton Systems, Inc., Electron Tube Division, 63 Comp. Gen. 585, 588 (1984), 84-2 C.P.D. ¶ 317 at 4. Further, procuring agencies are relatively free to determine the manner in which proposals will be evaluated so long as the method selected provides a rational basis for source selection and the actual evaluation is conducted in accordance with the established criteria. Joint Action in Community Service, Inc., B-214564, Aug. 27, 1984, 84-2 C.P.D. ¶ 228 at 2, 3. Also, we will question a contracting official's determination concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations, Bank Street College of Education, 63 Comp. Gen. 393, 400 (1984), 84-1 C.P.D. ¶ 607 at 10, and it is the protester who has the burden of affirmatively proving its case; the fact that the protester does not agree with the agency's evaluation of its proposal does not in itself render the evaluation unreasonable. Litton Systems, Inc., Electron Tube Division, 63 Comp. Gen. 589 (1984), 84-2 C.P.D. ¶ 317 at 5.

When a cost-reimbursement contract is involved, the risk of a cost overrun is borne by the government. Therefore, proposed costs must be analyzed in terms of their realism, since regardless of the costs proposed by the offeror, the government is bound to pay the contractor actual and allowable costs up to the contract ceiling. See Advanced Technology Systems, Inc., 64 Comp. Gen. 343 (1985), 85-1 C.P.D. ¶ 315 at 4; Bell Aerospace Co.; Computer Sciences Corp., 54 Comp. Gen. 352, 359 (1974), 74-2 C.P.D. ¶ 248 at 11; Federal Acquisition Regulation

(FAR), 48 C.F.R. § 15.605(d) (1984). Thus, a determination of cost realism requires more than the acceptance of proposed costs as submitted; rather, the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agencies involved, since they are in the best position to assess "realism" of cost and technical approaches and must bear the major criticism for any difficulty or expenses resulting from a defective cost analysis. Id. Since the cost realism analysis is a function of the contracting agency, our review is limited to a determination of whether an agency's cost evaluation was reasonably based and was not arbitrary. Robert E. Derecktor of Rhode Island, Inc., et al., B-211922, et al., Feb. 2, 1984, 84-1 C.P.D. ¶ 140 at 11.

Here, we have examined the record and conclude that the Army's cost analysis was reasonable. In accordance with the solicitation, the Army considered both estimated costs and proposed fee in the evaluation for award and gave the lowest point score for proposed fee to the highest proposed percentage fee. The Army used its own cost estimate and Defense Contract Audit Agency audits of each proposal to analyze cost realism and examined each offeror's proposed costs for realism using information provided by the offerors to show the sources for and the costs of materials and services as well as the procedures and rationale used to compile the proposed costs. The Army evaluators determined that Raytheon's estimated costs were unrealistically low as they were substantially below the government's estimate of \$8 million as the most probable cost for this project and gave Raytheon a low score for that reason.

Raytheon counters that its technical and management proposals were rated highly and that it is therefore inconsistent for the Army to conclude that such understanding of the requirements that resulted in those scores does not also extend to the cost predictions necessary to perform the work. We think it is not unreasonable for an agency to find that an offeror, while indicating a good understanding of the work requirements, is nevertheless proposing costs below what the required efforts likely will cost. We note here that the protester, other than challenging the Army's evaluation, has offered no evidence that would suggest its proposed approach would indeed cost substantially less than the Army's estimate or that the Army was arbitrary and capricious in evaluating its cost proposal the way it did. Accordingly, we find no basis to object to the cost evaluation.

Raytheon also contends that its technical proposal was downgraded for a lack of design engineering capability when the solicitation indicated no effort would be expended in this regard. However, the Army points out that the protester's technical proposal was downgraded in relation to production engineering rather than design engineering capability. Raytheon's initial submission in this area was unsatisfactory, according to the Army, because it did not address the engineering resources required in support of each system. Raytheon revised its proposal after discussions to describe the engineering staff and responsibilities. However, the Army states, the final proposal did not provide a breakout by quarter or actual manhour estimate, additional details were still lacking, and the information was not provided in the requested format. Raytheon does not challenge the Army's assessment of these production features of its best and final offer. We, therefore, find that the Army's analysis of Raytheon's production engineering capability reflects a reasoned approach to the solicitation's requirements and a proper exercise of evaluative judgment. In addition to having failed to support its specific contention that its engineering approach was improperly evaluated, we find that Raytheon has failed to show that the agency's evaluation of its proposal as a whole lacked a reasonable basis. Environmental Science and Services Corp., et al., B-216893 et al., Mar. 4, 1985, 85-1 C.P.D. ¶ 269 at 6, 7. The protester's allegations here appear to be no more than disagreement with the result of the procurement and are not supported by the record in this case. Systematics General Corp., B-214171, Jan. 22, 1985, 85-1 C.P.D. ¶ 73.

Protester next alleges that the solicitation misled offerors by not disclosing the precise numerical weights to be used in the evaluation process. Raytheon believes that the evaluation scheme, which assigned weights of 75 percent, 15 percent, and 10 percent, in the technical, management and cost categories, respectively, violated the RFP's stated evaluation criteria since it gave greater weight to technical factors than could reasonably have been anticipated by Raytheon from a reading of the RFP, and as such, Raytheon was not advised of the broad scheme of scoring to be employed in the evaluation of proposals.

Initially, the Army contends that these allegations by Raytheon involve the Army's selection of evaluation criteria to be used in the source selection process. Since

these evaluation criteria were apparent on the face of the solicitation, the Army argues that Raytheon has raised these issues in an untimely manner under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), which require that allegations involving apparent solicitation improprieties must be filed prior to the closing date set for receipt of proposals. Since the closing date set for receipt of proposals was December 28, 1984, the Army concludes that Raytheon's protest filed on June 28, 1985, is untimely. Raytheon argues that it is not protesting the basic evaluation factors set forth in the RFP, but rather the relative scoring weights for each evaluation factor which were not disclosed in the RFP and which first became known to the protester at the June 24, 1985, debriefing on this procurement.

A protester may delay the filing of its protest until after a debriefing where the information available earlier left uncertain whether there was any basis for protest. Technical Services Corp., B-216408.2, June 5, 1985, 85-1 C.P.D. ¶ 640 at 3. It appears that Raytheon became aware of the alleged deceptive nature of the scoring scheme, improper weighting of evaluation factors, failure to make award in accordance with the RFP, and inadequacy of the cost proposal evaluation for the first time at the debriefing. Since Raytheon filed its protest with this Office within 10 days after the debriefing, we will consider these bases of protest.

A solicitation must clearly advise offerors of the broad scheme of scoring to be employed and give reasonably definite information concerning the relative importance of the evaluation factors in relation to each other. This, however, does not mean that the disclosure of the precise numerical weights to be used in the evaluation is required. See The Bendix Corp., B-208184, Sept. 16, 1983, 83-2 C.P.D. ¶ 332 at 4; BDM Services Co., B-180245, May 9, 1974, 74-1 C.P.D. ¶ 237 at 7; see also Technical Services Corp., 64 Comp. Gen. 245 (1985), 85-1 C.P.D. ¶ 152 at 13. Here, the solicitation provided that award of the contract would be made to the offeror submitting the best overall proposal on the basis of three major factors listed in their order of importance as: technical (which is weighted greater than management and cost combined), management (which is weighted greater than cost), and cost (which is weighted less than management). Raytheon argues, however, that the weighting system eventually applied by the Army (technical - 75 percent, management - 15 percent, cost - 10 percent) did not adequately reflect the RFP's statement of

the importance of evaluation factors and misled offerors who could not have reasonably anticipated the overstated significance being attached to the technical proposal.

In our view, the actual evaluation weight given to the technical portion of the proposal--when compared to the evaluation weights given to the management portion and the cost proposal--is both mathematically and verbally consistent with the RFP's statement that technical would be greater than management and cost proposals combined. So is the weight given to management and to cost. Although we think the statement of evaluation factors could have been more specific, as, for example, with a statement that technical considerations were approximately three times greater than price, so that offerors would have had more definite information as to the degree of importance to be accorded to particular factors in relation to each other, see Bayshore Systems Corp., B-184446, Mar. 2, 1976, 76-1 C.P.D. ¶ 146 at 4, citing BDM Services Co., B-180245, May 9, 1974, 74-1 C.P.D. ¶ 237, the evaluation was consistent with the RFP. Also, despite Raytheon's protest assertion that offerors were misled, there is no evidence of record indicating that the weighted scoring scheme prejudiced Raytheon or other offerors in any demonstrable manner. Accordingly, we find no basis to sustain the protest on this issue.

Finally, Raytheon contends that because E-system was not the lowest cost, technically qualified offeror, it was not possible for the award to E-Systems to be based upon "that proposal offering the greatest overall benefit to the government" as required by the RFP. In essence, Raytheon argues that the technical merit of E-Systems' proposal could not outweigh the \$2,508,768 in added proposed costs to the government which that proposal represented.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest cost unless the RFP specifies that cost will be the determinative factor. The Communications Network, B-215902, Dec. 3, 1984, 84-2 C.P.D. ¶ 609. We have upheld awards to higher rated offerors with significantly higher proposed costs where it was determined that the cost premium involved was justified considering the significant technical superiority of the selected offeror's proposal. Stewart & Stevenson Services, Inc., B-213949, Sept. 10, 1984, 84-2 C.P.D. ¶ 268. The procuring agency has the discretion to select a more highly rated technical proposal if doing so is in the

government's best interests and is consistent with the evaluation scheme set forth in the solicitation. Haworth, Inc., B-215638.2, Oct. 24, 1984, 84-2 C.P.D. ¶ 461.

Raytheon's \$5,263,373 proposed cost was \$2,508,786 lower than E-Systems' proposed cost of \$7,772,159. However, the Army's cost realism analysis--which we have already concluded was reasonable--showed that Raytheon's proposed cost was unrealistically low in comparison with the government's \$8 million probable cost estimate. As a result, the Army reasonably expected the actual costs of the two proposals to be approximately equal. Therefore, although E-Systems did not offer the government the lowest proposed cost, its evaluated cost as adjusted for realism was determined to be fair and reasonable in comparison with the government's estimate and its overall cost proposal was evaluated as superior to the protester's.

E-Systems also received the highest number of evaluation points overall as well as the highest number of points in the most important category--technical. Moreover, we have found that Army selection officials reasonably determined that E-Systems' proposal was technically superior to Raytheon's in such critical areas as resource requirements and contractor facility operations. In these circumstances, we find the award to the technically superior offeror to be consistent with the RFP's evaluation criteria which stated that the technical area would be considered the most important criterion and we have no basis for disputing the Army's determination that E-System's proposal was the most advantageous to the government.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel